

Message Text

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ACTION PM-09

INFO OCT-01 EUR-25 NEA-10 ADP-00 CIAE-00 DODE-00 H-02

INR-10 L-03 NSAE-00 NSC-10 PA-03 RSC-01 PRS-01 SS-15

USIA-12 GAC-01 TRSE-00 MBFR-03 SAJ-01 IO-12 OIC-04

AEC-11 ACDA-19 OMB-01 RSR-01 /155 W

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FM AMEMBASSY THE HAGUE

TO SECSTATE WASHDC 1021

AMEMBASSY ANKARA

AMEMBASSY ATHENS

AMEMBASSY BONN

AMEMBASSY BRUSSELS

USMISSION EC BRUSSELS UNN

AMEMBASSY COPENHAGEN

AMEMBASSY LISBON

AMEMBASSY DUBLIN

AMEMBASSY LONDON

AMEMBASSY LUXEMBOURG

AMEMBASSY OSLO

AMEMBASSY OTTAWA

AMEMBASSY PARIS

AMEMBASSY REYKJAVIK

AMEMBASSY ROME

AMEMBASSY VIENNA

USMISSION NATO

SECDEF WASHDC

USNMR SHAPE

C O N F I D E N T I A L THE HAGUE 1533

VIENNA FOR MBFR DEL

E. O. 11652: GDS

TAGS: PFOR, PARM, EEC

SUBJECT: EC POLITICAL COMMITTEE DISCUSSION OF MBFR

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REFS: (A) USNATO 1625; (B) BONN 4803

MFA POL DIRECTOR' S SPECIAL ASST. FOR EC POL CONSULTATIONS (VAN EEKELEN) GENERALLY CONFIRMED REFTEL ACCOUNTS OF MBFR DISCUSSIONS DURING MARCH 30 POLITICAL COMMITTEE (PC) MEETING. IN DESCRIBING DUCCI' S PRESENTATION, VAN EEKELEN COMMENTED THAT EMPHASIS ON EC MEMBERS BEING SUBJECT TO DIFFERENT REGIMES STRUCK DUTCH PRIMARILY AS EFFORT TO DRAW OUT FRENCH VIEW ON MBFR , CONCENTRATION ON US- SOVIET STATIONED FORCES IS LESS NEGATIVE THEN CONCENTRATION ON INDIGENOUS FORCES. VAN EEKELEN SAID DUTCH AGREE WITH DUCCI' S CONCLUSION THAT MBFR SHOULD CONCENTRATE ON US AND SOVIET FORCES, BUT FOR DIFFERENT REASONS THAN DUCCI ADVANCED. INSTEAD OF BEING CONCERNED ABOUT FORCES OF EC COUNTRIES BEING SUBJECT TO " DIFFERENT RTH LAWYERS STATE, IT IS THERE OPINION AFTER THOROUGH RESEARCH/ REFLECTION/ CONSULTATION THAT IT WOULD BE PROCEDURALLY IMPOSSIBLE TO JOIN ISSUE AGAINST UNION BANK IF

OUR POSTURE REMAINS - AS IT PRESENTLY IS - MERELY ONE OF FILING ANSWER, AS DEFENDENT, OPPOSING SHAMA' S APPLICATION FOR PERMANENT INJUNCTION AGAINST PAYMENT BY UNION BANK UNDER GUARANTY. WITHOUT OUR HAVING FIRST LAUNCHED OUR OWN INDEPENDENT SUIT AGAINST UNION BANK, DELHI HIGH COURT' S OPTIONS, IN INJUNCTION SUIT, WILL BE LIMITED TO GRANTING/ DENYING APPLICATION AND, IF WE SO MOVE, TO GRANTING/ DENYING USG COUNTER CLAIMS AGAINST SHAMA (I. E., FOR NON- PAYMENT ON LOAN AGREEMENT AS TO WHICH, OF COURSE, IT VERY UNLIKELY WE COULD COLLECT ANYTHING FROM SHAMA AFTER SECURED CREDITORS PAID OFF). WITH OUR HAVING FIRST LAUNCHED OUR OWN SUIT AGAINST BANK, ON OTHER HAND, WE CAN THEN MOVE FOR CONSOLIDATION BEFORE DELHI HIGH COURT OF ALL ISSUES AGAINST SHAMA AND BANK, THEREBY BEST PROMOTING WHAT WE CONCEIVE AS USG OBJECTIVES IN THIS MATTER: EXPEDITIOUS AND DECISIVE RESOLUTION OF ISSUES RAISED BY SHAMA" BNAK AND MAXIMUM POSSIBLE RECOVERY AGAINST BOTH.

2. COUNSEL NOW SEES NO RPT NO PROBLEM FOR US IN BANK' S RAISING AS DEFENSE, IN INDEPENDENT USG LAW SUIT PER ABOVE, FACT OF OUTSTANDING TEMPORARY EX PARTE INJUNCTION EARLIER OBTAINED BY SHAMA FORGE. COUNSEL NOW CONFIDENT THAT BANK, WHILE IT MIGHT USE THIS TEMPORARY INJUNCTION (WHICH WE WOULD OF COURSE BE SEEKING, IN EFFECT, TO HAVE SET ASIDE IN RESISTING SHAMA' S APPLICATION FOR PERMANENT INJUNCTION) AS DEFENSE AGAINST ACTUAL PAYMENT TO USG , WOULD NONETHELESS HAVE TO RESPOND ON MERITS TO INDEPENDENT SUIT BY USG.

3. COUNSEL ASKED TO FURNISH US WRITTEN STATEMENT CONFIRMING FOREGOING RECOMMENDATIONS . COPY WILL BE FURNISHED OPIC WHEN RECEIVED.

4. COUNSEL NOW DRAFTING COURT PAPERS (PETITION AND COMPLAINT) IN LINE WITH PARA ONE ABOVE - I. E. THOSE NECESSARY TO COMMENCE USG INDEPENDENT SUIT AGAINST UNION BANK. THESE SHOULD BE READY IN ONE WEEK' S TIME FOR YOUR AND OUR REVIEW. LOCAL LIMITED OFFICIAL USE

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COUNSEL HAS ALSO SOUGHT AND OBTAINED EXTENSION UNTIL JULY 9 RPT JULY 9 OF OUR TIME TO FILE ANSWER IN INJUNCTION SUIT.

(LONG EXTENSION ATTRIBUTABLE TO VACATION SCHEDULE OF JUDGE BEFORE WHOM CASE DOCKETED.) THUS WE NOW HAVE AMPLE TIME POLISH OUR DOCUMENTATION AND AGREE ON TACTICS. COUNSEL WOULD LIKE, HOWEVER, TO SEE ALL USG PAPAXS APPROVED AND READY FOR FILING BY APRIL 30.

5. ON ASSUMPTION USG WILL, PER ABOVE, LAUNCH INDEPENDENT SUIT AGAINST UNION BANK, COUNSEL AGAIN RAISING QUESTION WHETHER OPIC - NOT NAMED IN GUARANTY OR IN ANY NOTICE TO BANK OF ASSIGNMENT OF AID' S ADMINISTRATIVE RESPONSIBILITY, AND NOT OWNER OF ASSETS IN QUESTION - CAN PROPERLY BE NAMED AS PARTY (PLAINTIFF). COULSEL' S CONCERN IS, OF COURSE, THAT USG' S SUIT, ONCE LAUNCHED, NOT BE SUBJECT TO CHALLENGE AND DISMISSAL ON ARGUMENT THAT PLAINTIFF NAMED IS NOT REAL PARTY TO INTEREST. WE EXPLAINED TO COUNSEL THAT, ON USG SIDE, THIS ISSUE HAD BEEN THOROUGHLY VETTED AND, UNLESS WE RECEIVE STRONG REASONS/ FIRM RECOMMENDATION TO CONTRARY, WE WOULD PREFER TO STAY WITH OPIC AS PARTY; IN ANY EVENT, WE SAID, AID COULD NOT BE PARTY IN ITS OWN NAME AND CHOICES WERE OPIC OR DEPT. OF JUSTICE. COUNSEL STATED THAT DESIGNATION OF OPIC AS PLAINTIFF MIGHT NECESSITATE FORMAL ASSIGNMENT OF RIGHTS UNDER GUARANTY FROM AID TO OPIC AND NOTICE OF SAME TO UNION BANK AND SHAMA; HOWEVER, IN SUCH CASE, PROCEDURAL FORMALITIES MIGHT, UNDER INDIAN LAW, ATTRACT HIGH STAMP TAX. COUNSEL WILL REVIEW THIS MATTER THOROUGHLY AND ADVISE FURTHER; FOLLOWING WHICH WE WILL INFORM YOU OF OUR RECOMMENDATION (WITH RATIONALE).

6. COUNSEL REITERATES ADVICE AGAINST OUR INTERVENING IN BHOPAL OR OTHER SUITS. BHOPAL SUIT, OPIC WILL RECALL, IS ONE IN WHICH UNION BANK IS SEEKING DECLARATORY JUDGMENT THAT BANK CAN, LEGALLY, AND WITHOUT EXPOSURE TO ITS STOCKHOLDERS, HONOR GUARANTY. COUNSEL SUSPECTS THIS MAY BE COLLUSIVE SUIT. USG HAS NOT RPT NOT BEEN SERVED WITH NOTICE OF THIS SUIT AND WILL NOT RPT NOT BE BOUND BY ITS OUTCOME. TO INTERVENE IN THIS SUIT WOULD IN COUNSEL' S JUDGMENT, BE IN NO WAY MORE ADVANTAGEIOUS THAN DELHI LITIGATION AND WOULD HAVE SIGNIFICANT DISADVANTAGES: BHOPAL IS FAR FROM DELHI AND SUIT WOULD THEREFORE BE DIFFICULT TO FOLLOW; STILL ANOTHER COUNSEL WOULD HAVE TO BE RETAINED AND BRIEFED; AND SUIT MAY, INDEED, BUT COLLUSIVE AND, IF SO, OUR CHANCE OF SUCCESS GREATLY REDUCED. OTHER OUTSTANDING SUITS, OUTLINE OF WHICH EARLIER FURNISHED OPIC, DO NOT INVOLVE ISSUES LIMITED OFFICIAL USE

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DIRECTLY PERTINENT TO USG INTERESTS AND FOR REASONS OF TYPE SKETCHED ABOVE, INTERVENTION APPEARS NON- PRODUCTIVE FROM USG STANDPOINT.

7. FINALLY, ONE POTENTIALLY IMPORTANT NEW DEVELOPMENT: WE HAVE THIS WEEK BEEN ADVISED OF, AND ASKED TO ATTEND, EXPLORATORY MEETING OF SHAMA' S CREDITORS (FINANCIAL INSTITUTIONS AND OTHERS) SCHEDULED FOR APRIL 5 IN BOMBAY. APPARENT PURPOSE OF MEETING IS TO DISCUSS POSSIBILITIES/ MEANS FOR REVITALIZING SHAMA. WE WILL OF COURSE BE ATTENDING THIS MEETING (WITH THACKER).

WE ARE MEANWHILE REPORTING BY SEPTTEL SUCH DETAILS AS PRESENTLY AVAILABLE; FURTHER REPORT ZCLL FOLLOW APRIL 5 MEETING. HOWEVER, WE WISH AT THIS TIME NOTE OUR THINKING (WITHOUT

PREJUDGING ANY PROPOSALS WHICH MAY BE MADE) THAT, WHILE REASONABLE RESOLUTION SHORT OF LITIGATION WOULD BE WELCOME, FRESH AND COMPETENT NEW MANAGEMENT FOR SHAMA AND CLEAN ACKNOWLEDGEMENT BY BANK OF ITS GUARANTY OBLIGATION REMAIN SINE QUA NON ANY SUCH RESOLUTION. FURTHER, APPEARS TO US WE CAN HARDLY BE EXPECTED TO CONSIDER SERIOUSLY AND WORK TOWARD ANY RESOLUTION WHILE " UNDER THE GUN" AS DEFENDANTS IN DELHI INJUNCTION SUIT BROUGHT BY SHAMA ITSELF.

DECON 4/3/74.
MOYNIHAN

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Message Attributes

Automatic Decaptioning: X
Capture Date: 07 MAY 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 03 APR 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: boyleja
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973THEHA01533
Document Source: ADS
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: n/a
Film Number: n/a
From: THE HAGUE
Handling Restrictions: n/a
Image Path:
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Legacy Key: link1973/newtext/t19730460/abqcektg.tel
Line Count: 188
Locator: TEXT ON-LINE
Office: ACTION PM
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: boyleja
Review Comment: n/a
Review Content Flags: ANOMALY
Review Date: 01 AUG 2001
Review Event:
Review Exemptions: n/a
Review History: RELEASED <01-Aug-2001 by reddocgw>; APPROVED <29-Aug-2001 by boyleja>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: <DBA CORRECTED> gwr 971120
Subject: EC POLITICAL COMMITTEE DISCUSSION OF MBFR
TAGS: PARM, PFOR, NL, EEC
To: STATE
ANKARA
ATHENS
BONN
BRUSSELS
EC BRUSSELS UNN
COPENHAGEN

LISBON
DUBLIN
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LUXEMBOURG
OSLO
OTTAWA
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REYKJAVIK
AMEMBASS ROME
VIENNA
USMISSION NATO
SECDEF
USNMR SHAPE

Type: TE

Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005